IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5123 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VALLABHAI M GADHIA

Versus

STATE OF GUJARAT

Appearance:
MR HEMANG RAWAL for MR AD OZA for Petitioners
MS BR GAJJAR, ld.AGP for respondent State
MR HM BHAGAT for respondents 2-4

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 25/09/2001

ORAL JUDGEMENT

The petitioners in this petition have challenged the vires of Section 20(a) and 20(b) of Schedule I to the Bombay Stamp Act, 1958 (hereinafter referred to as 'the

Act') as well as other consequential changes in respect of the market value made in Sections 28 and 29 of the said Act as amended by the Gujarat Act No.21 of 1982 as ultra vires, illegal and nonest in the eye of law. The petitioner has also challenged the order dated January 26, 1985 passed by the Collector, Bhavnagar under Section 39(1)(b) of the Act ordering the petitioners to pay the deficit stamp duty of Rs.4372.50 plus Rs.4372.50 being the amount of penalty, in all Rs.8745/-.

At the time of hearing of this petition, learned Counsel for the petitioners stated before this Court that he does not challenge the vires of the Section incorporated herein and on the contrary, he seeks leave of this Court to avail alternative remedy by way of appeal under Section 53 of the Act in view of the judgment rendered by this Court in Sachin Udyog Nagar Sahakari Mandli Ltd. and anr. v. State of Gujarat and ors., reported in 1997 (4) GCD 63 (Guj.) wherein this Court ruled that, against the order passed by the Collector under Section 39 of the Act, correctional remedy is provided and that correction in the impugned order can be made on all the grounds including the ground of lack of jurisdiction and it cannot be said that the remedy of appeal is not efficacious and effective. In that view of the matter, leave is granted to the petitioners to approach the appellate authority by way of appeal challenging the impugned order dated 26th January 1985 passed by the respondent no.3.

In view of the directions given by this Court, in the case of Sachin Udyog Nagar Sahakari Mandli Ltd. (supra), I also give similar directions. If the appeal is filed by the petitioners within one month from the date of receipt of the certified copy of this order, the same shall not be dismissed on the ground of limitation. Interim relief shall continue to operate till the appellate authority decides the appeals. In case the appeals are not filed within the period as aforesaid, the interim relief shall stand discharged.

Subject to the directions given above, Rule is discharged with no order as to costs.

25th Sept.2001 (K.R. Vyas, J.)

Sreeram.